



STATE OF CALIFORNIA

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Executive Secretary

July 23, 1987

Dear Ms. -

This is in response to your letter dated June 3, 1987. In your letter you reference our letter of May 22, 1987 in which we advised you on the change in ownership statutes applicable to a proposed transaction wherein X Corp. will organize a wholly owned subsidiary, Y Corp. X Corp. will deed the real property to Y Corp. in exchange for 100 percent of Y Corp.'s stock. X Corp. will then sell 50 percent of Y Corp.'s stock to Z. Z is an investor not related to X Corp. Z has no interest in the real property that will be transferred from X Corp. to Y Corp.

It was our opinion that the transfer of real property from X Corp. to its newly formed wholly owned subsidiary Y Corp. is excluded from change in ownership by Revenue and Taxation Code section 62(a)(2). The subsequent sale of 50 percent of Y Corp.'s stock to Z also will not result in a change in ownership because Z is not obtaining "control" under section 64(c), nor obtaining more than 50 percent of the stock under section 64(d). You have now discovered that about one-fourth of the real property which X Corp. plans to transfer to its subsidiary, Y Corp, is not held in fee simple. Instead, X Corp. is the lessee under mineral leases with respect to these parcels of property. You ask whether the proposed transaction will be held to be a change in ownership of the mineral leases.

Revenue and Taxation Code section 61 provides in part as follows:

"Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to: (a) The creation, renewal, sublease, assignment or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised"

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By its express terms, the scope of Section 61 is limited by the provisions of Section 62. In our previous exchange of letters, we determined that the transfer by X Corp. to Y Corp. of an interest in real property would not be a change in ownership because Section 62(a)(2) excludes such transfers. Consequently, the assignment by X Corp. to Y Corp. of mineral leases will not constitute a change in ownership of an interest in real property.

The second proposed transaction, the sale of only fifty percent of the shares of Y Corp. to Z, also will not be a change in ownership of the mineral leases. Section 64(a) of the Revenue and taxation Code provides that the purchase or transfer of stock of a corporation is not deemed to be a transfer of the real property owned by the corporation. Two exceptions to this general rule are set forth in Sections 64(c) and 64(d). We have previously determined that neither of these exceptions will apply to the proposed sale of Y Corp. stock to Z. Section 64 contains no language indicating that it is not applicable to mineral leases. Therefore, the sale by X Corp. to Z of fifty percent of the shares of Y Corp. will not constitute a change in ownership of an interest in real property.

Once again, we have not reviewed any of the documents connected with the transaction. Therefore, our opinion is based solely on the facts set forth in your letters. Further, the views expressed in this letter are advisory only and are not binding upon any assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If you have any questions or if you wish to discuss this further, please contact me.

Very truly yours,

Michele F. Hicks

Michele F. Hicks
Tax Counsel

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